

DEPARTMENT OF HEALTH
Adoption of Chapter 11-453
Hawaii Administrative Rules

October 11, 2010

Chapter 453 of Title 11, Hawaii Administrative Rules,
entitled "Hawaii Emergency Planning and Community
Right-to-Know Act" is adopted to read as follows:

HAWAII ADMINISTRATIVE RULES

TITLE 11

DEPARTMENT OF HEALTH

CHAPTER 453

HAWAII EMERGENCY PLANNING AND COMMUNITY RIGHT-TO-KNOW
ACT

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SUBCHAPTER 1

INTRODUCTION AND GENERAL PROVISIONS

\$11-453-1 Purpose. The purpose of the rules in this chapter is to implement the Hawaii Emergency Planning and Community-Right-to-Know Act. The rules are to administer and enforce the reporting requirements of Title III of the Superfund Amendments and Reauthorization Act of 1986 ("SARA Title III") and regulations for emergency planning notification, material safety data sheets, chemical lists, emergency and hazardous chemical inventory forms, and toxic chemical release forms and to supplement the federal statute and regulations in the interest of protecting the health and safety of the citizens of Hawaii. [Eff

NOV 05 2010

] (Auth: HRS §§128E-1, 128E-2,

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128E-3, 128E-4, 128E-5, 128E-6, 128E-7, 128E-8, 128E-9, 128E-10, 128E-11, 128E-12, 128E-13) (Imp: HRS §§128E-1, 128E-2, 128E-3, 128E-4, 128E-5, 128E-6, 128E-7, 128E-8, 128E-9, 128E-10, 128E-11, 128E-12, 128E-13)

§11-453-2 Definitions. The following words or terms, when used in this chapter, shall have the following meanings:

"Administrator" means the administrator of the United States Environmental Protection Agency.

"CERCLA" means the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, title 42 United States Code sections 9601-9675.

"Commission" means the Hawaii state emergency response commission.

"Committee" means the local emergency planning committee within each county responsible for preparing hazardous material plans and performing other functions under the Emergency Planning and Community Right-to-Know Act of 1986 and chapter 128E, Hawaii Revised Statutes (HRS).

"County agency" means a county or any officer or agency thereof.

"Department" means the department of health.

"Director" means the director of health.

"EPA" means the United States Environmental Protection Agency.

"EPCRA" means the Emergency Planning and Community Right-to-Know Act of 1986, as amended, title 42 United States Code sections 11001-11050.

"Emergency response plan" means a written plan outlining procedures to protect public health and safety in the event of an accidental release of an extremely hazardous substance. The required elements for an emergency response plan are listed in section 11-453-29(b).

"Environment" means any waters, including surface water, ground water, or drinking water; any land

surface or any subsurface strata; or any ambient air, within the State or under the jurisdiction of the State.

"Extremely hazardous substance" or "EHS" means any substance listed in title 40 Code of Federal Regulations part 355, appendices A and B, as amended.

"Facility" means any building, structure, installation, equipment, pipe or pipeline (including any pipe into a sewer or publicly-owned treatment works), well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor carrier, rolling stock, aircraft, site, or area where a hazardous substance or pollutant or contaminant has been deposited, stored, disposed of, or placed, or otherwise comes to be located. The term does not include any consumer product in consumer use.

"Hazardous chemical" means any hazardous chemical as defined under title 29 Code of Federal Regulations section 1910.1200(c), except that such term does not include the following substances:

- (1) Any food, food additive, color additive, drug, or cosmetic regulated by the Food and Drug Administration.
- (2) Any substance present as a solid in any manufactured item to the extent exposure to the substance does not occur under normal conditions of use.
- (3) Any substance to the extent it is used for personal, family, or household purposes, or is present in the same form and concentration as a product packaged for distribution and use by the general public.
- (4) Any substance to the extent it is used in a research laboratory or a hospital or other medical facility under the direct supervision of a technically qualified individual.
- (5) Any substance to the extent it is used in routine agricultural operations or is a fertilizer held for sale by a retailer to the ultimate customer.

"Hazardous material" or "hazardous substance" means any hazardous substance as defined in section 128D-1, HRS, and designated in section 11-451-5.

"HEPCRA" means the Hawaii Emergency Planning and Community Right-to-Know Act.

"Material Safety Data Sheet" or "MSDS" means the sheet required to be developed under title 29 of the Code of Federal Regulations section 1910.1200(g).

"Person" means an individual, firm, corporation, association, partnership, consortium, joint venture, commercial entity, state, county, commission, or, to the extent the United States or an interstate body is subject to this chapter, the United States or the interstate body.

"Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing of any hazardous substance, or pollutant or contaminant into the environment, including the abandonment or discarding of barrels, containers, and other closed receptacles containing a hazardous substance, or pollutant or contaminant. The term does not include:

- (1) Any release that results in the exposure of persons solely within a workplace, with respect to claims that these persons may assert against their employer;
- (2) Emissions from the engine exhaust of a motor vehicle, rolling stock, aircraft, vessel, or pipeline pumping station engine;
- (3) Release of a source, byproduct, or special nuclear material from a nuclear incident, as those terms are defined in the Atomic Energy Act of 1954, as amended, title 42 United States Code section 2011 et seq., if this release is subject to requirements with respect to financial protection established by the Nuclear Regulatory Commission under title 42 United States Code section 2210;
- (4) Any release resulting from the normal application of fertilizer;

- (5) Any release resulting from the legal application of a pesticide product registered under the Federal Insecticide, Fungicide, and Rodenticide Act, as amended; or
- (6) Any release from sewerage systems collecting and conducting primarily domestic wastewater.

"Reportable quantity" means the quantity of a hazardous material stated on the various lists of hazardous substances as defined in section 128D, HRS, and designated in section 11-451-6.

"SARA Title III" means Title III of the Superfund Amendments and Reauthorization Act of 1986, title 42 United States Code sections 11001-11050.

"Threshold planning quantity" or "TPQ" means the threshold planning quantity for an "extremely hazardous substance" as defined in title 40 Code of Federal Regulations part 355.

"Toxic chemical" means a substance appearing on the list of chemicals described in section 313 of the Emergency Planning and Community Right-to-Know Act of 1986, as set forth in title 40 Code of Federal Regulations part 372. [Eff NOV 05 2010] (Auth: HRS §128E-1) (Imp: HRS §128E-1)

§11-453-3 Incorporations by reference.

Reference to title 40 Code of Federal Regulations shall mean (unless otherwise specifically provided) the Superfund, Emergency Planning and Community Right-to-Know Act Regulations, July 2010. [Eff NOV 05 2010] (Auth: HRS §§128E-1, 128E-2) (Imp: HRS §§128E-1, 128E-2).

§11-453-4 Electronic business. (a) The intent of this section is to authorize and promote the development of electronic business by the commission and the committees, and the section shall be interpreted broadly.

(b) The commission and committees may each separately or jointly authorize the submission of reports, notifications, and payments electronically, when and under those conditions that the commission or committee considers appropriate. The commission may specify whether the electronic notification or report may replace or supplements the existing paper notices or reports. The commission and committees will provide notice to public of the availability and use of electronic business methods to satisfy reporting or other requirements under this chapter.

(c) The commission and committees may each separately or jointly authorize the submission of a single electronic report or notification to meet multiple reporting or notification requirements by different jurisdictions, when and under those conditions that the commission or committee considers appropriate.

- (1) This "one stop" operation includes both reports and notifications sent first directly to the commission or a committee, and reports and notifications sent first directly to another entity beside the commission or a committee.

[Comment: For example, the commission, committees, and department may implement and update automated information exchange systems for hazardous chemical inventory reporting as discussed in section 11-453-27(c) and toxic chemical release reporting and information exchanges described under subchapter 7.]

- (2) The commission and committees may enter agreements with other entities for coordinated and integrated electronic business.

(d) The commission and committees may use the provisions for electronic and facsimile reporting and notification in section 11-1-4.

(e) The commission and committees shall comply with the U.S. Environmental Protection Agency Cross-Media Electronic Reporting Rule, title 40 Code of

Federal Regulations part 3, to the extent that it applies to commission or committee electronic business. [Eff **NOV 05 2010**] (Auth: HRS §§128E-1, 128E-2, 128E-3) (Imp: HRS §§128E-1, 128E-2).

SUBCHAPTER 2

STATE EMERGENCY RESPONSE COMMISSION

§11-453-5 Establishment of state emergency response commission. The Hawaii state emergency response commission is created pursuant to section 128E-2(a), HRS, and is placed within the department for administrative purposes and carries out the requirements of this chapter. [Eff **NOV 05 2010**] (Auth: HRS §128E-2) (Imp: HRS §128E-2)

§11-453-6 Commission members and their responsibilities. (a) The governor shall appoint the commission members as described in section 128E-2(b), HRS.

(b) Commission members are subject to the requirements of section 128E-2(c) to (g), HRS. [Eff **NOV 05 2010**] (Auth: HRS §128E-2) (Imp: HRS §128E-2)

§11-453-7 Duties and responsibilities. The commission shall perform duties and responsibilities as described in section 128E-2(g), HRS. [Eff **NOV 05 2010**] (Auth: HRS §128E-2) (Imp: HRS §128E-2)

§11-453-8 Appointment of hearing officers. In addition to other specific powers provided in this chapter, the commission may appoint, without regard to chapter 76 HRS, hearing officers to conduct public participation activities, including public hearings

and public information meetings. [Eff NOV 05 2010]
(Auth: HRS §§128E-2, 128E-3) (Imp: HRS §§128E-2,
128E-3)

§11-453-9 Immunity from civil liability. (a)
No commission member shall be liable for the death of
or any injury to persons, the loss of or damage to
property, or any civil damages, resulting from any act
or omission arising out of the performance of the
functions, duties, and responsibilities of the
commission, except for acts or omissions that
constitute wilful misconduct.

(b) No employee, representative, or agent of a
state or county agency, or persons requested by a
state or county agency to engage in any emergency
service or response activities involving a hazardous
material release at a facility or transportation
accident site, shall be liable for the death of or any
injury to persons, or the loss of or damage to
property, resulting from that hazardous material
release, except for any acts or omissions that
constitute wilful misconduct. [Eff NOV 05 2010]
(Auth: HRS §128E-10) (Imp: HRS §128E-10)

SUBCHAPTER 3

LOCAL EMERGENCY PLANNING COMMITTEES

§11-453-10 Establishment of local emergency
planning districts. Each county is designated as an
emergency planning district for the purposes of this
chapter; provided that the department is responsible
for Kalawao County. [Eff NOV 05 2010] (Auth:
HRS §128E-4) (Imp: HRS §128E-4)

§11-453-11 Establishment of local emergency
planning committees. Local emergency planning
committees are created pursuant to section 128E-5(a),
HRS. The committees shall be subject to the

requirements of this chapter and section 303 of the EPCRA, title 42 United States Code section 11003. [Eff **NOV 05 2010**] (Auth: HRS §128E-5) (Imp: HRS§128E-5)

§11-453-12 Committee members. The commission shall appoint the committee members as described in section 128E-5(b) to (e), HRS. [Eff **NOV 05 2010**] (Auth: HRS §128E-2) (Imp: HRS §128E-2)

§11-453-13 Duties and responsibilities. Each committee shall perform duties and responsibilities as described in section 128E-5(f), HRS. [Eff **NOV 05 2010**] (Auth: HRS §128E-5) (Imp: HRS §128E-5)

§11-453-14 Funding. (a) Administrative and operational expenses of a committee may be paid by the State. Funding for operation and administration of committees shall come from the local emergency response planning committee account within the environmental response revolving fund established under section 128D-2, HRS.

(b) Each committee must establish an account with the finance department of the local government in their planning district in order to receive funding.

(c) Funding shall be used to fulfill the duties and responsibilities of the committee as described in section 11-453-13. [Eff **NOV 05 2010**] (Auth: HRS §§128E-5, 128E-8) (Imp: HRS §§128E-5, 128E-8)

§11-453-15 Immunity from civil liability. (a) No committee member shall be liable for the death of or any injury to persons, the loss of or damage to property, or any civil damages, resulting from any act or omission arising out of the performance of the functions, duties, and responsibilities of the committee, except for acts or omissions that constitute wilful misconduct.

(b) No employee, representative, or agent of a state or county agency, or persons requested by a state or county agency to engage in any emergency service or response activities involving a hazardous material release at a facility or transportation accident site, shall be liable for the death of or any injury to persons, or the loss of or damage to property, resulting from that hazardous material release, except for any acts or omissions that constitute wilful misconduct. [Eff NOV 05 2010]
(Auth: HRS §128E-10) (Imp: HRS §128E-10)

SUBCHAPTER 4

EMERGENCY PLANNING

§11-453-16 Facilities subject to emergency planning requirements. (a) The requirements of this subchapter apply to:

- (1) Each owner or operator of a facility that stores, uses, or manufactures any hazardous substance and at which there is present an amount of any extremely hazardous substance equal to or in excess of its threshold planning quantity; and
- (2) Each owner or operator of a facility that has been designated by the commission or the Governor after public notice and opportunity for comment.

(b) For purposes of this subchapter, an amount of any extremely hazardous substance means the total amount of an extremely hazardous substance present at any one time at a facility at concentrations greater than one per cent by weight, regardless of location, number of containers, or method of storage. Methods for calculation of quantities are described in section 11-453-18. [Eff NOV 05 2010] (Auth: HRS §§128E-6, 128E-7, 128E-13) (Imp: HRS §§128E-6, 128E-7, 128E-13)

§11-453-17 Emergency planning requirements. (a)
The owner or operator of a facility subject to
emergency planning requirements of this subchapter
shall:

- (1) Designate a facility representative who will
serve as a facility emergency coordinator
and work with the committee to implement
local emergency planning.
- (2) Notify the committee and commission within
sixty days of the facility first being
subject to regulation under this rule.
- (3) On or before March 1 of each year, inform
the committee of any changes occurring at
the facility which may be relevant to
emergency planning, including whether the
facility ceases to meet the minimum
emergency planning thresholds described in
section 11-453-19.
- (4) Upon request of the committee having
jurisdiction over the facility, promptly
provide to the committee any information
necessary for development or implementation
of the chemical emergency response and
preparedness plan for the emergency planning
district. [Eff NOV 05 2010] (Auth:
HRS §128E-6) (Imp: HRS §128E-6)

§11-453-18 Calculation of quantities for
comparison with threshold planning quantities for
solids and mixtures. (a) If a container or storage
vessel holds a mixture or solution of an extremely
hazardous substance, then the concentration of
extremely hazardous substance, in weight per cent
(greater than one per cent), shall be multiplied by
the mass (in pounds) in the vessel to determine the
actual quantity of extremely hazardous substance
therein. If the concentration of an extremely
hazardous substance is less than or equal to one per
cent in the mixture, you do not have to count that
extremely hazardous substance.

(b) You must aggregate (i.e., add together) the amounts of each extremely hazardous substance at your facility to determine if a threshold planning quantity is present. This means that, for a particular extremely hazardous substance, you must determine the total amount present at any one time at your facility by adding together the quantity of pure extremely hazardous substance and the quantity contained in all mixtures, regardless of location, number of containers, or method of storage. You do not have to count an extremely hazardous substance in a mixture if the concentration of that extremely hazardous substance is less than or equal to one per cent.

(c) Extremely hazardous substances that are solids are subject to either of two threshold planning quantities as shown in title 40 Code of Federal Regulations part 355, appendices A or B (e.g., lower threshold planning quantity/upper threshold planning quantity). The lower threshold planning quantity applies only if the solid exists in powdered form and has a particle size less than one hundred microns; or is handled in solution or in molten form; or meets the criteria for a National Fire Protection Association rating of two, three, or four for reactivity. If the solid does not meet any of these criteria, it is subject to the upper threshold planning quantity as shown in title 40 Code of Federal Regulations part 355, appendices A or B.

(d) The one hundred micron level may be determined by multiplying the weight per cent of solid with a particle size less than one hundred microns in a particular container by the quantity of solid in the container.

(e) The amount of solid in solution may be determined by multiplying the weight per cent of solid in the solution in a particular container by the quantity of solution in the container.

(f) The amount of solid in molten form must be multiplied by 0.3 to determine whether the lower threshold planning quantity is met.

(g) For purposes of this rule "mixture" means a heterogeneous association of substances where the

various individual substances retain their identities and can usually be separated by mechanical means. Includes solutions or compounds but does not include alloys or amalgams. [Eff NOV 05 2010] (Auth: HRS §128E-6) (Imp: HRS §128E-6)

§11-453-19 List of extremely hazardous substances and their threshold planning quantities. Extremely hazardous substances and their applicable threshold planning quantities and reportable quantities are those substances and quantities listed at title 40 Code of Federal Regulations part 355, appendices A and B, as amended. [Eff NOV 05 2010] (Auth: HRS §§128E-1, 128E-6) (Imp: HRS §§128E-1, 128E-6)

SUBCHAPTER 5

EMERGENCY RELEASE NOTIFICATION

§11-453-20 Facilities subject to emergency release notification. (a) The requirements of this subchapter apply to any facility at which:

- (1) A hazardous chemical is produced, used or stored; and
- (2) There is release of a reportable quantity of any hazardous substance or extremely hazardous substance within any 24-hour period. Certain releases are exempted from these requirements. Exempted releases are listed in section 11-453-20(b).

(b) This subchapter does not apply to:

- (1) Any release which results in exposure to persons solely within the boundaries of the facility;
- (2) Any release which is a federally permitted release as defined in section 101 (10) of Comprehensive Emergency Response, Compensation and Liability Act;

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- (3) Any release that is continuous and stable in quantity and rate under the definitions in title 40 Code of Federal Regulations section 302.8(b). Exemption from notification under this subchapter does not include exemption from:
 - (A) Initial notifications as defined in title 40 Code of Federal Regulations section 302.8 (d) and (e);
 - (B) Notification of a "statistically significant increase", defined in title 40 Code of Federal Regulations section 302.8(b) as any increase above the upper bound of the reported normal range, which is to be submitted to the community emergency coordinator for the committee for any area likely to be affected by the release and to the commission likely to be affected by the release;
 - (C) Notification of a "new release" as defined in title 40 Code of Federal Regulations section 302.8(g)(1); or
 - (D) Notification of a change in the normal range of the release as required under title 40 Code of Federal Regulations section 302.8(g)(2).
- (4) Any release of a pesticide product exempt from Comprehensive Emergency Response, Compensation and Liability Act section 103(a) reporting under section 103(e) of Comprehensive Emergency Response, Compensation and Liability Act;
- (5) Any release not meeting the definition of release under section 101(22) of Comprehensive Emergency Response, Compensation and Liability Act, and therefore exempt from section 103(a) reporting; and
- (6) Any radionuclide release which occurs:

- (A) Naturally in soil from land holdings such as parks, golf courses, or other large tracts of land.
 - (B) Naturally from land disturbance activities, including farming, construction, and land disturbance incidental to extraction during mining activities, except that which occurs at uranium, phosphate, tin, zircon, hafnium, vanadium, monazite, and rare earth mines. Land disturbance incidental to extraction includes: land clearing; overburden removal and stockpiling; excavating, handling, transporting, and storing ores and other raw (not beneficiated or processed) materials; and replacing in mined-out areas coal ash, earthen materials from farming or construction, or overburden or other raw materials generated from the exempted mining activities.
 - (C) From the dumping and transportation of coal and coal ash (including fly ash, bottom ash, and boiler slags), including the dumping and land spreading operations that occur during coal ash uses.
 - (D) From piles of coal and coal ash, including fly ash, bottom ash, and boiler slags.
- (7) Any release in amounts less than 1,000 pounds per 24 hours of:
- (A) Nitrogen oxide to the air that is the result of combustion and combustion-related activities.
 - (B) Nitrogen dioxide to the air that is the result of combustion and combustion-related activities. [Eff NOV 05 2010
] (Auth: HRS §§128E-6, 128E-7, 128E-13) (Imp: HRS §§128E-6, 128E-7, 128E-13)

§11-453-21 Designation of extremely hazardous substances and hazardous substances. (a) This section designates the extremely hazardous substances and hazardous substances subject to release notification requirements contained in section 11-453-23.

(b) Extremely hazardous substances are those substances and quantities listed in title 40 Code of Federal Regulations part 355, appendices A and B, as amended.

(c) Hazardous substances are defined in section 128D-1, HRS, and designated in section 11-451-5. [Eff **NOV 05 2010**] (Auth: HRS §§128D-1, 128E-1, 128E-6, 128E-7) (Imp: HRS §§128D-1, 128E-1, 128E-6, 128E-7)

§11-453-22 Determination of reportable quantities. (a) This section designates the reportable quantities for the extremely hazardous substances and hazardous substances designated pursuant to section 11-453-21.

(b) The reportable quantities for extremely hazardous substances will be their respective reportable quantities as defined in title 40 Code of Federal Regulations part 355, appendices A and B, as amended.

(c) The reportable quantities for hazardous substances will be the quantity of a hazardous material stated in the various lists of hazardous substances as defined in section 128D-3, HRS, and designated in section 11-451-6. [Eff **NOV 05 2010**

] (Auth: HRS §§128E-1, 128E-6, 128E-7) (Imp: HRS §§128E-1, 128E-6, 128E-7)

§11-453-23 Release notification requirements. (a) The owner or operator of a facility shall make two separate notifications to comply with the emergency release notification requirements of this subchapter: an immediate notification, and as soon as

practicable thereafter a written follow-up emergency notification (or notifications, as more information becomes available). The owner or operator of a facility must provide the immediate release notification and written follow-up emergency notification to the commission, committee, and the fire department of any area likely to be affected by the release. Procedures for notifying of a release that occurs during transportation or from storage incident to transportation are set forth in section 11-453-23(d).

(b) The immediate notification required under this section shall include the following to the extent known at the time of notice and so long as no delay in notice or emergency response results:

- (1) The name (trade and chemical) and chemical abstract service registry number, if available, of the hazardous substance that has been released;
- (2) An indication of whether the substance is an extremely hazardous substance;
- (3) The approximate quantity of the hazardous substance, extremely hazardous substance, pollutant, or contaminant that has been release;
- (4) The reportable quantity or threshold planning quantity that is the basis for notification;
- (5) The location of the release;
- (6) A brief description of the release including the medium or media into which the release occurred or is likely to occur, and the cause of the release;
- (7) The date, time and duration of the release, and the date and time that the person in charge of the facility where the release occurred, obtained knowledge of the release;
- (8) The source of the release;
- (9) The name, address, and telephone number of the caller;

- (10) The name, address, and telephone number of the owner and operator of the facility where the release has occurred;
- (11) The name, address, and telephone number of a contact person at the facility where the release has occurred;
- (12) Measures taken or proposed to be taken in response to the release as of the time of the notification, and any appropriate information relating to the ability of the owner or operator of the facility where the release has occurred to pay for or perform any proposed or required response actions;
- (13) The names of other federal, state, or local government agencies that have been notified of the release;
- (14) Any known or anticipated acute or chronic health risks associated with the release and where appropriate, advice regarding medical attention necessary for exposed individuals; and
- (15) Any other information which is relevant to assessing the hazard posed by the release, including but without limitation, potential impacts to public health or welfare, or the environment.

(c) Within 30 days after a release which requires notice under subsection (b) such owner or operator shall provide a written follow-up notice as established by the department. The written form for the follow-up notice will be available from the department of health, hazard evaluation and emergency response office.

(d) An owner or operator of a facility from which there is a transportation-related release may meet the requirements of this subchapter by providing the information indicated in subsection (b) to the 911 operator, or in the absence of a 911 emergency telephone number, to the operator. For purposes of this subsection, a transportation-related release means a release during transportation or storage incident to transportation if the stored substance is

moving under active shipping papers, and has not reached the ultimate consignee. [Eff **NOV 05 2010**]
] (Auth: HRS §§128E-6, 128E-7) (Imp: HRS §§128E-6, 128E-7)

§11-453-24 Applicability of other release reporting requirements to facilities subject to emergency release notification requirements.
Facilities subject to the emergency release notification requirements of this subchapter must also comply with the release notification requirements for all other applicable statutes and rules including but not limited to hazardous substances established in sections 11-451-4 through 11-451-7 and reporting requirements established under title 40 Code of Federal Regulations part 302, as necessary. [Eff **NOV 05 2010**]
(Auth: HRS §§128D-7, 128E-6, 128E-7) (Imp: HRS §§128D-7, 128E-6, 128E-7)

SUBCHAPTER 6

HAZARDOUS CHEMICAL REPORTING

§11-453-25 Facilities subject to hazardous chemical reporting requirements. (a) The requirements of this subchapter apply to each owner or operator of a facility that is required to prepare or have available a material safety data sheet (MSDS) for a hazardous chemical under the Occupational Safety and Health Act of 1970, as amended, title 15 United States Code section 651 et seq. and regulations promulgated under that Act; and meets any of the minimum threshold levels described in subsection (b) of this section.

(b) Except as provided in paragraph (b)(6) of this section, the minimum threshold levels for reporting under this subchapter shall be as specified in paragraphs (b)(1) through (b)(5):

- (1) All hazardous substances, except for extremely hazardous substances, present at

the facility in amounts not less than 10,000 pounds;

- (2) All extremely hazardous substances present at the facility in amounts not less than 500 pounds, or the threshold planning quantity for that substance, whichever is less. Extremely hazardous substances are described in section 11-453-21(b) of this chapter. Threshold planning quantities for extremely hazardous substance are shown in title 40 Code of Federal Regulations part 355, appendices A or B, as amended. Some extremely hazardous substances may have two threshold planning quantities (e.g., lower threshold planning quantity/upper threshold planning quantity, use the lower of those quantities if it is less than 500);
- (3) The minimum threshold for reporting of gasoline (all grades combined) that was in tank(s) entirely underground, at a retail gas station that was in compliance at all times during the preceding calendar year with all applicable underground storage tank requirements (title 40 Code of Federal Regulations part 280 or requirements of the state underground storage tank program approved by the U.S. Environmental Protection Agency under title 40 Code of Federal Regulations part 281), is 75,000 gallons (or approximately 283,900 liters). For purposes of this part, retail gas station means a retail facility engaged in selling gasoline or diesel fuel principally to the public, for motor vehicle use on land.
- (4) The minimum threshold for reporting of diesel fuel (all grades combined) that was in tank(s) entirely underground, at a retail gas station that was in compliance at all times during the preceding calendar year with all applicable underground storage tank requirements (title 40 Code of Federal

- Regulations part 280 or requirements of the state underground storage tank program approved by the U.S. Environmental Protection Agency under title 40 Code of Federal Regulations part 281), is 100,000 gallons (or approximately 378,500 liters).
- (5) The minimum threshold for reporting of all other hazardous chemicals is 10,000 pounds (or 4,540 kgs.). Hazardous chemicals are defined in section 11-453-2.
- (6) The minimum threshold for reporting in response to requests for submission of a material safety data sheet or a tier II form from the commission or committee or fire department having jurisdiction over the facility shall be zero. [Eff NOV 05 2010
(Auth: HRS §§128E-6, 128E-13) (Imp: HRS §§128E-6, 128E-13)]

§11-453-26 Submittal of material safety data sheets. An owner or operator described in section 11-453-25 shall complete a list of hazardous chemicals present at the facility by March 1 of each year and submit a material safety data sheet for such a hazardous chemical to the commission, committee or fire department having jurisdiction over the facility not more than thirty days after a request.

§11-453-27 Submittal of State of Hawaii chemical inventory form (tier II). (a) An owner or operator described in section 11-453-25 shall submit a State of Hawaii chemical inventory (tier II) form using options provided by the department of health, hazard evaluation and emergency response office by March 1 of each year for all hazardous substances, extremely hazardous substances, and hazardous chemicals present at the facility at any one time in amounts equal to or greater than their respective thresholds in the proceeding calendar year.

(b) A State of Hawaii chemical inventory (tier II) form shall be submitted to the department of health, hazard evaluation and emergency response office, committee and fire department having jurisdiction over the facility.

(c) The department of health, hazard evaluation and emergency response office, committee, and fire department may implement an automated information exchange system so that the submission of a State of Hawaii chemical inventory (tier II) form to one agency satisfies the requirement of submission to all.

(d) The owner or operator of a facility that has submitted an inventory form under this section shall allow on-site inspection by the fire department having jurisdiction over the facility upon request of the department, and shall provide to the department specific location information on hazardous substances, extremely hazardous substances, and hazardous chemicals at the facility. [Eff NOV 05 2010]
(Auth: HRS §128E-6) (Imp: HRS §128E-6)

§11-453-28 Submittal of tier II forms by request. The owner or operator of a facility described in section 11-453-25 shall submit a tier II form to the department of health, hazard evaluation and emergency response office, committee, or the fire department having jurisdiction over the facility upon request of such persons. The tier II form shall be submitted within 30 days of the receipt of each request. [Eff NOV 05 2010] (Auth: HRS §128E-6) (Imp: HRS §128E-6)

§11-453-29 Submittal of emergency response plans. (a) An owner or operator described in section 11-453-25 shall submit an emergency response plan along with their submittal of the State of Hawaii chemical inventory form (tier II) to the department of health, hazard evaluation and emergency response office, committee, and the fire department having jurisdiction over the facility.

(b) At a minimum, the emergency response plan should include:

(1) A diagram of the facility with the following information:

- (A) Emergency contact information for the facility;
- (B) Facility entrances;
- (C) Facility emergency exits;
- (D) Location of areas or structures designated for storage including temporary storage for longer than 72 hours under active shipping papers of extremely hazardous substances and hazardous substances;
- (E) If installed, location of any mitigating measures such as, but not limited to:
 - (i) Fire extinguishers;
 - (ii) Fire hoses;
 - (iii) Sprinkler systems;
 - (iv) Smoke detectors; and
 - (v) Emergency warning systems.

(c) After the first submission of an emergency response plan, resubmission is only required when changes are made to any of the minimum elements of the plan described in section 11-453-29(b). [Eff

NOV 05 2010] (Auth: HRS §128E-6)
(Imp: HRS §128E-6)

§11-453-30 Notification that a facility is no longer subject to hazardous chemical reporting requirements. The owner or operator a facility will submit a notice to the commission, committee, and fire department indicating that the facility is no longer subject to the hazardous chemical reporting requirements of this subchapter when the facility no longer meets a minimum reporting threshold in section 11-453-25(b) for any hazardous substance, extremely hazardous substance, or hazardous chemical. [Eff
NOV 05 2010] (Auth: HRS §128E-6) (Imp: HRS §128E-6)

SUBCHAPTER 7

TOXIC CHEMICAL REPORTING

§11-453-31 Facilities subject to toxic chemical release reporting . (a) The owner or operator of a facility subject to toxic chemical release recordkeeping and reporting as described in title 40 Code of Federal Regulations part 372 shall comply with the requirements of such part.

(b) Facilities that submit toxic chemical release data to the U.S. Environmental Protection Agency via the Environmental Protection Agency's Central Data Exchange (using the toxic release inventory-made easy tool) for the first time, as paper forms or via diskette shall also submit toxic chemical release data to the department.

(c) After the first year of usage, facilities that submit toxic chemical release data to the U.S. Environmental Protection Agency via the Environmental Protection Agency's Central Data Exchange (using the toxic release inventory-made easy tool) are not required to submit toxic chemical release data to the department. [Eff **NOV 05 2010**] (Auth: HRS §§128E-7, 128E-13) (Imp: HRS §§128E-7, 128E-13)

SUBCHAPTER 8

FUNDING AND FEES

§11-453-32 Annual inventory filing fees for hazardous chemical reporting. Facilities that are required to report according to section 11-453-27 shall remit \$100 with each submission of chemical inventory forms or tier II forms to the commission by March 1 of each year. All moneys collected by the department pursuant to this section shall be deposited in the state treasury and accrue to the credit of the environmental response revolving fund. [Eff **NOV 05 2010**] (Auth: HRS §128E-9) (Imp: HRS §128E-9)

11-453-33 Local emergency response planning committees account. (a) The department shall establish an account, to be called the local emergency response planning committees account, within the environmental response revolving fund pursuant to section 128D-2, HRS for the purpose of administration and oversight of this chapter.

(b) All moneys to meet the general operating needs and expenses of the Emergency Planning and Community Right-to-Know Act program of the department shall be allocated by the legislature through appropriations out of the state general fund and the environmental response revolving fund; provided that the appropriations from the environmental response revolving fund shall not exceed the amount of moneys collected from the filing fees assessed in section 128E-9, HRS. The department shall include in its budgetary request for each upcoming fiscal period the amounts necessary to effectuate the purposes of this chapter.

(c) The department, with the assistance of the department of budget and finance and department of accounting and general services, shall prepare a report for the legislature concerning the amount of moneys collected during the preceding fiscal year, the amount of moneys collected to date during the current fiscal year, and the amount of moneys to be collected during the upcoming fiscal year, pursuant to sections 128E-9 and 128E-11, HRS. The department shall submit the foregoing report to the legislature not less than twenty days prior to the convening of each regular session of the legislature. [Eff **NOV 05 2010**]
(Auth: HRS §128E-8) (Imp: HRS §128E-8)

SUBCHAPTER 9

COMMUNITY RIGHT-TO-KNOW REQUESTS

S11-453-34 Receiving and processing community right-to-know requests. (a) To obtain information regarding a specific hazardous chemical or extremely hazardous substance at a specific facility, local emergency response plan, or notice regarding a reportable toxic chemical release, a person shall submit a written request to the committee or commission. The committee will have primary responsibility for processing such requests. If a request is submitted to a committee, the committee is encouraged to forward a copy of the request to the commission so commission staff can coordinate a response to the request.

(b) The committee or commission shall respond to a written request for information. The response shall advise the person making the request of one of the following:

- (1) The time and location at which the person may inspect and copy the requested information;
- (2) That additional information is needed to process the request;
- (3) That the requested information is not available but the commission or committee will ask the owner or operator of the facility to provide the information; or
- (4) That the request is denied because:
 - (A) The requested information does not exist;
 - (B) The owner or operator of the facility is not required to provide the information; or
 - (C) The committee or commission determined that disclosing the information will impair its ability to protect public health or safety and the public interest in nondisclosure outweighs the public interest in disclosure.

(c) The committee or commission shall charge the person making a request under this subchapter the cost of reproducing the information requested. The commission shall deposit the funds received under this

subchapter in the local emergency response planning committee's account that is discussed in subchapter 8. of this chapter.

(d) The committee or commission will provide all information to any person unless that information is protected from disclosure by federal or state law or the committee or commission makes a finding in accordance with section 11-453-34(b)(4)(C). [Eff

NOV 05 2010] (Auth: HRS §§ 92-21, 92F, 128E-2, 128E-3, 128E-13) (Imp: HRS §§92-21, 92F, 128E-2, 128E-3, 128E-13)

§11-453-35 Trade Secrecy Claims. (a) Any person asserting trade secrecy claims for chemical identity information collected under this chapter shall follow the procedures established by the U.S. Environmental Protection Agency described at title 40 Code of Federal Regulations part 350 (Trade Secret Claims for Emergency Planning and Community Right-to-Know Act Information: and Trade Secret Disclosures to Health Professionals).

(b) A copy of the redacted version of the documents, and a copy of page 1 of the accompanying U.S. Environmental Protection Agency substantiation form, submitted to the U.S. Environmental Protection Agency shall be submitted to the commission.

(c) Public petitions requesting disclosure of chemical identity claimed as trade secret shall be made in accordance with procedures described in title 40 Code of Federal Regulations section 350.15 and 350.16. [Eff NOV 05 2010] (Auth: HRS §§92F, 128E-2, 128E-6, 128E-13) (Imp: HRS §§92F, 128E-2, 128E-6, 128E-13)

SUBCHAPTER 10

ENFORCEMENT

§11-453-36 Violations. (a) Whenever, on the basis of information available, the commission finds

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that any person has violated or is in violation of the Hawaii Emergency Planning and Community Right-to-Know Act, 128E, HRS, or any rule or regulation adopted pursuant thereto, the commission:

- (1) Shall cause written notice to be served upon the alleged violator or violators. The notice shall specify the alleged violation and may contain an order specifying a reasonable time during which the facility shall submit the required reports, forms, and notifications;
- (2) May require the alleged violator or violators to appear before the commission for a hearing at a time and place specified in the notice or to be set later, and to answer the charges complained of; and
- (3) May impose penalties as provided in section 128E-11, HRS and section 11-453-37 by sending a written notice describing the violation, either by certified mail or personal service, to the alleged violator or violators. The exercise of any of the remedies provided in this subchapter shall not preclude recourse to any other remedy so provided. [Eff **NOV 05 2010**] (Auth: HRS §128E-12) (Imp: HRS §128E-12)

11-453-37 Penalties and fines. (a) Any person who violates any of the emergency reporting, planning, or notification requirements of sections 128E-6, and 128E-7, HRS or rules or regulations adopted pursuant, or fails to pay the fees required by section 128E-9, HRS and section 11-453-32, shall be subject to a civil penalty of not less than \$1,000 but not more than \$25,000 for each separate offense. Each day of each violation shall constitute a separate offense.

(b) Any person who:-

- (1) Knowingly fails to report the release of a hazardous substance or extremely hazardous substance, as required by section 128E-7, HRS and section 11-453-23, shall be guilty

of a misdemeanor and, upon conviction, be fined not less than \$1,000 but not more than \$25,000 for each separate offense, or imprisoned for not more than one year, or both. For the purposes of this paragraph, each day of each violation shall constitute a separate offense; or

- (2) Intentionally obstructs or impairs, by force, violence, physical interference, or obstacle, a representative of the department, a hazardous materials response team, or a committee attempting to perform the duties and functions set forth in section 128E-5, HRS and subchapter 3, shall be guilty of a misdemeanor and, upon conviction, be fined not less than \$5,000 but not more than \$25,000 for each separate offense, or be imprisoned for not more than one year, or both.

(c) All moneys collected under this subchapter shall be deposited in the state treasury and accrue to the credit of the fines and cleanup account within the state general fund. [Eff **NOV 05 2010**] (Auth: HRS §128E-11) (Imp: HRS §128E-11)

§11-453-38 Inspection procedures. (a) Officials of the department are authorized to enter during normal operating hours any facility or other area of a facility; to inspect and investigate during normal operating hours within reasonable limits and in a reasonable manner, any such facility; and to review records which are directly related to the purpose of the inspection.

(b) Officials of the department may perform unannounced inspections at a facility or provide notice to the owner or operator of a facility prior to performing the inspection.

(c) Upon a refusal to permit officials of the department, in exercise of his or her official duties, to enter a facility during normal business hours, to inspect, to review records, or to question any owner,

operator, or employee of the facility, the department shall take appropriate action, including compulsory process, if necessary. The term compulsory process shall mean the institution of any appropriate action, including ex parte application for an inspection warrant or its equivalent.


(d) Any permission by an owner or operator to enter, inspect, review records, or question any person, shall not imply or be conditioned upon a waiver of any cause of action, civil administrative order, or penalty under chapter 128E, HRS.

(e) Officials of the department shall have authority to take or obtain photographs and copies of documents related to the purpose of the inspection.

(f) Officials of the department shall have the authority to privately question an owner, operator, or employee of a facility concerning matters regarding the Hawaii Emergency Planning and Community Right-to-Know Act to the extent they deem necessary for the conduct of an effective and thorough inspection. [Eff

NOV 05 2010] (Auth: HRS §§128E-2, 128E-12)
(Imp: HRS §§128E-2, 128E-12)

The adoption of chapter 11-453 shall take effect ten days after filing with the Office of the Lieutenant Governor.

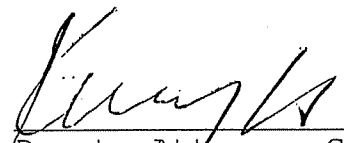

Chiyome Leinaala Fukino, M.D.
Director of Health

APPROVED: _____


Linda Lingle
Governor, State of Hawaii

Dated: 10/25/10

APPROVED AS TO FORM:


Deputy Attorney General

Filed

10 OCT 26 2010

LEUTENANT GOVERNOR
OFFICE